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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,681	01/10/2002	Ernst Markart	3597-13-1	9212

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EXAMINER

HYUN, PAUL SANG HWA

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 08/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/043,681		MARKART, ERNST	
	Examiner		Art Unit	
	Paul S. Hyun		1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-17, 19 and 20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-17, 19, 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

REMARKS

Applicant's Request for Continued Examination has been acknowledged. Claims 11-17, 19 and 20 are pending. Claims 11-13 and 20 have been amended. Amendments to the claims have been acknowledged and entered. It should be noted that the amendments have changed the scope of claims 11-14 and 20.

With respect to the objection made to the Abstract cited in the Final Rejection, the replacement Abstract submitted by Applicant has been acknowledged. Consequently, the objection is withdrawn.

With respect to the rejection of claims 13 and 14 under 35 U.S.C. 112 1st paragraph cited in the Final Rejection, the amendment made to the claims has been acknowledged. Consequently, the rejection has been withdrawn.

With respect to the rejection of claim 20 under 35 U.S.C. 112 2nd paragraph cited in the Final Rejection, the amendment made to the claims has been acknowledged. Consequently, the rejection has been withdrawn.

Claim Objections

Claim 16 is objected to because of the following informalities:

The limitation "recessdefined" recited in line 3 should be amended to "recess defined". Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Hönes et al. (US 5,424,035).

Hönes et al. disclose a test strip analysis system including a test strip with a test field and an analysis apparatus 2 for measuring the test field of the test strip. The analysis apparatus comprises a test strip holder 3, wherein the test strip holder 3 has a positioning means in the form of a retaining lug 26 that engages the test strip in a definite position relative to a support surface 20, which comprises a measurement opening 23. The apparatus 2 further comprises two holding means 39 situated on the edges of the support surface spaced apart from one another for holding the edges of the test strip adjacent the support surface (see Figs. 1 & 2). It should be noted that because the support surface 20 comprises a hole in the form of the measurement opening 23, the support surface in a middle area between the holding means is interpreted to comprise the top surface of the measuring unit 11, which is vertically displaced relative to the edges of the support surface (see Fig. 3).

Claims 13 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Meinecke et al. (US 4,780,283).

Meinecke et al. disclose a test strip analysis apparatus comprising a flexible test strip 22 with a test field 60 and a measuring device for accommodating the test strip in order to measure the test field (see Figs. 1 & 2). The measuring device comprises an inner end and an outer insertion end, a support surface 24 that supports the test strip, and a positioning means in the form of a stop pin 28 that extends outwardly from the support surface toward the inner end of the measuring device. The stop pin 28 penetrates a recess 52 of the test strip to pin the test strip against a counter-pressure surface in the form of a guide element 32 that overlies the stop pin (see lines 63-66.col. 8 and Figs. 2 & 3). The guide element is generally parallel to the arm of the stop pin.

Claims 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Meinecke et al.

Meinecke et al. disclose a test strip analysis apparatus comprising a test strip 22 with a test field 60 and a measuring device for accommodating the test strip in order to measure the test field (see Figs. 1 & 2). The measuring device utilizes a pivotal clamping lever mechanism comprising a cam plate 26 and a clamping arm in the form of a stop pin 28 overlying (if the apparatus is viewed upside down) a guide element 32 to immobilize the test strip within the measuring device. The stop pin 28 is biased towards and penetrates a recess 52 of test strip 22 to pin the test strip against a support surface of the guide element 32 wherein the base of the stop pin 28 is parallel to the support surface of the guide element (see lines 63-66 col. 8 and Figs. 2 & 3). The cam plate 26 of pivotal clamping lever mechanism is connected to and works with a second lever arm

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having a second spring 30 to bias the stop pin 28 towards the surface of the test strip. The reference further discloses that the guide element 32 comprises a guide slot 34. The guide slot forms a groove, which narrows conically bi-axially (in the direction of insertion and vertically) to guide the test strip in position that allows stop pin 28 to penetrate recess 52 of the test strip (see line 64, col. 3 – line 8, col. 4 & lines 59-65, col. 8).

Claims 15, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Gassenhuber (US 4,934,817).

Gassenhuber discloses a test strip meter adapted to accommodate a test strip 20 having a test field 88. The meter comprises a support surface, a positioning means in the form of a detent ball 82, a clamping lever pivotal about axis 47, the lever further comprising a clamping arm 18 overlying (if the meter is viewed upside down) and biased towards the support surface and engageable with the surface of the test strip opposite the support surface (see Figs. 2-4). The clamping arm comprises a groove facing the support surface (see Fig. 4) as well as opposing edge flanges 28 adjacent the groove that is received in complementary recesses defined in the support surface when the clamping arm 18 is in the clamping position (see Fig. 5).

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Markart et al. (US 5,281,395)

Response to Arguments

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With respect to the rejection of claims 11 and 12 under 35 U.S.C. 102(b), Applicant's arguments in light of the amendments have been fully considered but they are not persuasive. It is the Office's stance that the limitations as recited in claims 11 and 12 are still anticipated by the disclosure of Hones et al.

It appears that the "projection" recited in claim 12 appears to correspond to "ring 94" shown in Fig. 10 of the Drawings submitted by Applicant. In order to overcome the disclosure of the Hönes et al. reference, the particular position of the ring 94 relative to other elements of the receiver needs to be more clearly recited. Claims 11 and 12 recite the limitation "test field" to describe the relative position of the projection as well as other features of the field system. However, because Applicant is not claiming a test strip or a test field as a part of the field system (see lines 6-12 of claim 11), the limitation "test field" can be construed to be any part of any object that can be accommodated by the field system.

With respect to the rejection of claims 15-17, 19 and 20, Applicant's arguments have been fully considered and they are persuasive. Examiner agrees with Applicant that it would not have been obvious to reposition the stop pin. Consequently, the rejection of claims 15-17, 19 and 20 cited in the previous Office Action has been withdrawn. However, in light of new interpretation of the claims, claims 15-17 are now rejected under 35 U.S.C. 102(b) as being anticipated by Meinecke et al. and claims 15, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Gassenhuber.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul S. Hyun whose telephone number is (571)-272-8559. The examiner can normally be reached on Monday-Friday 8AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571)-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PSH
7/31/06


Jill Warden
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